

ORIGINAL

1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 WILLIAM A. GROSS CONSTRUCTION,
5 ASSOCIATES, INC.,

6 Plaintiff,

7 - against -

8 AMERICAN MANUFACTURERS MUTUAL
9 INSURANCE COMPANY,

10 Defendant.

11 Case No.: 07-CV-10639 (LAK) (AJP)

12 -----X
13 And Successive Actions
14 -----X

15 303 Lippincott Drive
16 Marlton, New Jersey

17 March 20, 2009
18 10:05 a.m.

19 Deposition of Non-Party Witness, ROBERT
20 DIETERLE, taken pursuant to 30(b)(6) Notice, before
21 Rita Persichetty, a Notary Public of the State of
22 New Jersey.

23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
REF: 89704

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1 ----- I N D E X -----

2 WITNESS EXAMINATION BY PAGE
 3 ROBERT DIETERLE 30(b)(6) MS. HEWITT 10

4

5 DIRECTIONS: 33, 39

6

7 ----- E X H I B I T S -----

8	CWC	DESCRIPTION	FOR I.D.
9	Exhibit 4	Document Bates stamped	
10		DASNY-E 00812094-96	34
11	Exhibit 5	Document Bates stamped	
12		DASNY-P 0001151803-04	59
13	Exhibit 6	Document Bates stamped	
14		DASNY-P 000271485-90	60
15	Exhibit 7	Document Bates stamped	
16		DASNY-P 0001152635-40	66
17	Exhibit 8	Document Bates stamped	
18		DASNY-P 0001153011	74
19	Exhibit 9	Document Bates stamped	
20		DASNY-E 02249225-26 and	
21		additional two pages not	
22		Bates stamped	76
23	Exhibit 10	Document Bates stamped	
24		DASNY-E 00221439-45 and 448-456	80
25		(Ms. Hewitt retained the exhibits)	

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by and between the attorneys for the respective parties herein that the filing, sealing, and certification of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed to before the court.

- oOo -

1 R O B E R T D I E T E R L E,

2 called as a witness, having been sworn
3 by the Notary Public, was examined and
4 testified as follows:

5
6 EXAMINATION BY

7 MS. HEWITT:

8 Q Good morning, Mr. Dieterle. My name
9 is Patricia Hewitt and I'm representing
10 Caldwell Wingate in this litigation. I'm going
11 to be asking you some questions this morning.

12 Have you ever been deposed before?

13 A Yes, I have.

14 Q So you're familiar with the drill
15 giving your answers orally, waiting until I
16 finish my question before you answer, that kind
17 of thing?

18 A Yes.

19 Q If you have any questions, if you
20 don't understand a question of mine, just let
21 me know and I will try to rephrase it. And if
22 at any time you want a break, just let me know
23 that as well.

24 Mr. Dieterle, by whom are you
25 currently employed?

1 DIETERLE 30(b)(6)

2 A Hill International.

3 Q How long have you been employed by
4 Hill?

5 A I started with Hill in October of
6 1980 and have been employed by Hill since then
7 with the exception of a one and a half year
8 window in the early '90's.

9 MR. CARDENAS: Patricia, if I can
10 just interrupt for one second, I just want
11 to make the record clear that this is a
12 30(b)(6) deposition and there's a limited
13 focus to the deposition, so the questions
14 of this witness are really concerning the
15 circumstances of his employer's retention,
16 the timing of such and who he dealt with,
17 but the actual conclusions and opinions
18 that he came to are not going to be talked
19 about at this deposition, and any
20 questions which lead into that area are
21 going to be objected to and I'm going to
22 instruct the witness not to answer at that
23 time.

24 So with that initial statement on the
25 record, feel free to go ahead.

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MS. HEWITT: Thank you. Hopefully there won't be any problems, but if there are, counsel will have to address them.

Q And Mr. Dieterle, as long as we're doing some introductions, you understand that other parties are -- there are multiple parties in this case, they're represented by counsel, many, although not of all their counsel are here today, but I'm the only one that will actually be asking the questions.

A Okay.

Q Mr. Dieterle, during the window that you talked about in the early '90's, were you employed somewhere else?

A Yes, I was.

Q Where was that?

A A company called Environmental Resources Management, Inc., ERM, as it is referred to.

Q What is your current position with Hill?

A Vice president.

Q And what are your particular responsibilities as vice president?

DIETERLE 30(b)(6)

A Well, I guess generally my responsibilities are to assist clients in the evaluation of construction matters, construction disputes and things of that nature.

Q Are you in a particular department?

A I am in the -- I guess something called to the effect of the claims group.

Q How long have you been a vice president here, Mr. Dieterle?

A Since probably about 1996, something like that.

Q And have you been in the claims group that entire time?

A Yes.

Q Could you just tell me your educational background since high school?

A Yes, I have a bachelor of science in electrical engineering technology from Spring Garden College, Philadelphia. I have an MBA concentration in finance from La Salle University, also in Philadelphia.

Q Now, Mr. Dieterle, in your capacity as vice president of Hill International, have

1 DIETERLE 30(b)(6)

2 you had any responsibilities with respect to
3 the construction of the Bronx criminal
4 courthouse?

5 MR. CARDENAS: Objection to the form.
6 You can answer.

7 A Not to the construction, no.

8 Q Have you had any responsibilities
9 whatsoever with respect to anything having to
10 do with the Bronx criminal courthouse?

11 A Yes, I have.

12 Q Can you tell me what those
13 responsibilities have been?

14 A My responsibilities for the Bronx
15 courthouse, I think, would be generally
16 considered claims analysis work.

17 Q During what period of time did you do
18 that claims analysis work?

19 A From the -- I would say, I think it
20 was some time in September, late summer, early
21 fall, until probably about January of the next
22 year, '08.

23 Q So late summer, early fall of '07?

24 A Yes.

25 Q To January of '08?

1 DIETERLE 30(b)(6)

2 A Yes.

3 Q So is it fair to say, Mr. Dieterle,
4 that the claims work that you did was limited
5 to maybe six months at most?

6 MR. CARDENAS: Objection to the form.

7 A Yeah, generally maybe a little less
8 than that, but, you know, maybe four to five
9 months.

10 Q Do you have any responsibilities
11 relating to the Bronx criminal courthouse
12 today?

13 A Yes.

14 Q Other than having to be deposed?

15 A Yes, I do.

16 Q And what is that?

17 A We are currently doing a forensic
18 audit for one of the contractors.

19 Q Which contractor is that?

20 A O'Kane Electric.

21 Q And other than the work that you're
22 doing for O'Kane Electric, do you currently
23 have any other responsibilities with respect to
24 the Bronx criminal courthouse?

25 A No.

1 DIETERLE 30(b)(6)

2 Q Now, when you did the claims analysis
3 that you did in '07 and '08, who else from Hill
4 worked on that project with you?

5 A Two other people primarily assisted
6 in the evaluation, there may have been a few
7 others providing minor support that I don't
8 recall, but two gentlemen, one by the name of
9 Jim McKay and another by the name of Ed Vella,
10 V E L L A.

11 Q Did Mr. McKay and Mr. Vella work
12 during that same time period that you worked?

13 A Yes.

14 Q Mr. Dieterle, it may be that I may
15 refer to this project as either BCC or just the
16 project; is that okay with you, you'll know I'm
17 referring to the Bronx criminal courthouse?

18 A Yes.

19 MS. HEWITT: I'm going to be showing
20 the witness a document that was previously
21 marked as CWC 2.

22 Q Mr. Dieterle, have you seen the
23 document that's been marked as CWC 2 before?

24 A Yeah, I think I recall just referring
25 to it, but I mean, I don't have a real direct

1 DIETERLE 30(b)(6)
2 recollection of it because it was some time
3 ago, but I'm pretty sure I've seen this at the
4 time we were getting engaged for this task that
5 we did.

6 MS. HEWITT: Off the record.

7 (Discussion held off the record.)

8 Q Well, let me ask you this,
9 Mr. Dieterle: If you can turn to the signature
10 page of the document, which is before you get
11 to the various appendices, they're not marked,
12 unfortunately I can't -- can you just tell me
13 if you recognized who signed on behalf of Hill
14 International?

15 A Yes, that's Maury Masucci's
16 signature.

17 Q Whose is that, Mr. Masucci?

18 A Yes.

19 Q Who is that?

20 A He's here in the New Jersey office in
21 the claims group.

22 Q Did you have a general understanding,
23 Mr. Dieterle, as to what the purpose of this
24 contract was?

25 MR. CARDENAS: Objection to the form.

1 DIETERLE 30(b)(6)

2 MS. HEWITT: Well, he said he doesn't
3 have a direct recollection, but he thinks
4 he saw it at the time we were getting
5 engaged.

6 MR. CARDENAS: That's fine.
7 You can answer.

8 A Can you repeat the question, please?

9 Q Sure. Do you have a general
10 understanding as to what the purpose of this
11 contract was?

12 A Yes, a general understanding.

13 Q And what was your general
14 understanding? I understand you're not a
15 lawyer, I'm not asking for your legal
16 interpretation.

17 A I think it would be considered in
18 general terms in my understanding was a task
19 order contract for claims analysis services.

20 Q Now, if you can go a little further
21 into the document, Mr. Dieterle, to work
22 authorization No. 6, which is actually after
23 work authorization No. 8 and almost at the end
24 of the document.

25 A Okay.

1 DIETERLE 30(b)(6)

2 Q If you go to just about the next to
3 the last page, there's a signature and a date
4 of 9/13/07, is it your understanding that this
5 work authorization was approved in
6 approximately September '07?

7 A Yeah, that's about when, I think, we
8 got started, in that range.

9 Q And was it pursuant to this work
10 authorization that you did the claims work that
11 you testified about earlier?

12 A On the courthouse?

13 Q Yes.

14 A Yes.

15 Q I'm only going to be asking you about
16 the courthouse, that, I can promise you.

17 And to your knowledge, was this work
18 authorization No. 6 the first work
19 authorization that Hill performed in connection
20 with the courthouse?

21 MR. LEVY: Objection.

22 Q Sorry, let me step back for a minute.

23 Mr. Dieterle, if you could go to the
24 very first page of CWC 2, this contract is a
25 claim and auditing services contract; is that

1 DIETERLE 30(b)(6)

2 correct?

3 A Are you reading somewhere?

4 Q Yes, at the top right.

5 A Yes, it is.

6 Q So if you go back to work
7 authorization No. 6, my question more properly
8 is, is work authorization No. 6, to your
9 knowledge, the first work authorization that
10 Hill performed in connection with this claim
11 and auditing services contract?

12 A As far as I understand, yes.

13 Q And Mr. Dieterle, to your knowledge,
14 was this work in September 2007 the first time
15 that Hill undertook to do any work at all in
16 connection with the Bronx criminal courthouse?

17 MR. LEVY: Objection.

18 MR. CARDENAS: Objection to form.

19 A When you say Hill, are you speaking
20 Hill as a company or you said Hill?

21 Q Hill International.

22 A I knew at that time that we were on
23 site with our project management group.

24 Q So at that time, Hill International
25 was also serving as the construction manager;

1 DIETERLE 30(b)(6)

2 is that correct?

3 A Yes.

4 Q Now, if you will, in work
5 authorization No. 6 under the project
6 description, it says, provide for preliminary
7 claim analysis for the New York City Corporate
8 Counsel in order to identify project delays and
9 responsibilities at the Bronx County Hall of
10 Justice.

11 Do you see that?

12 A Yes.

13 Q Do you know, Mr. Dieterle, whether
14 Hill International entered into any contracts
15 directly with the New York City Corporation
16 Counsel?

17 MR. CARDENAS: Objection to the form
18 to the extent it requires the witness to
19 perform a legal analysis, but you're free
20 to answer the question.

21 A I'm not aware of any on this matter
22 at least.

23 Q Mr. Dieterle, I'm sorry to keep
24 making you go back and forth between pages, but
25 again, towards the end of work authorization

1 DIETERIE 30(b)(6)

2 No. 6 where there is the signature 9/13/07, it
3 says that the work performed shall be completed
4 on or about before November 6, 2007.

5 Do you see that?

6 A Yes.

7 Q Was the work, in fact, completed by
8 November 6, 2007?

9 A No, it wasn't.

10 Q Was a subsequent work authorization
11 issued?

12 MR. CARDENAS: Or something else.

13 A As far as I know, I mean, we -- I
14 don't know what contractually was done, but we
15 worked beyond that date, so I assume that there
16 was some contract mechanism to extend that
17 date.

18 Q Mr. Dieterie, you testified earlier
19 that in addition to you working on the claims
20 part of the work, Mr. Vella and Mr. McKay
21 worked on it. Did Mr. Zaretsky do any work in
22 connection with the claims --

23 A No.

24 Q -- part of the work?

25 MR. LEVY: Objection to the form of

1 DIETERLE 30(b)(6)

2 the question. When you say claims part of
3 the work, you're talking about this
4 specific contract?

5 MS. HEWITT: I'm talking about
6 anything under the claim audit and
7 services contract.

8 A He did nothing directly, no.

9 Q Are either Mr. Vella or Mr. McKay
10 attorneys?

11 A No.

12 Q And Mr. Vella and Mr. McKay are based
13 here; is that correct, here in New Jersey?

14 A Yes. Well, I -- just to clarify,
15 Mr. Vella doesn't work here anymore, but at the
16 time he was.

17 Q Now, during the four, five, six-month
18 period that you worked on the project,
19 Mr. Dieterle, did you interact with anybody
20 from the Dormitory Authority?

21 A Oh, yeah, absolutely.

22 Q And if I refer to the Dormitory
23 Authority as DASNY, you'll understand the
24 reference?

25 A Yes.

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Q With whom at the Dormitory Authority
did you interface?

A At the site, I guess the person that
we had some interface with was Jim Hall and we
also interfaced with, I guess, people that are
stationed in Albany, Chuck Bartlet, I think a
gentleman by the name of Wayne Morris, there
may have been others. And I also had some
interaction with George Weissman and perhaps
others on his staff. I think they would be the
primary ones that come to mind.

Q Was there somebody from DASNY that
was supervising your work?

MR. LEVY: Objection to the form of
the question.

MR. CARDENAS: Objection to the form
of the question.

A Yeah, I'm not sure what you mean by
supervising.

Q Well, let me ask it in a different
way. Who was the principal person at DASNY to
whom you reported?

MR. LEVY: Objection to the form of
the question.

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A Well, on a day-to-day --

MR. CARDENAS: I'll join in that objection.

MS. HEWITT: That's fine, the objections are on the record.

Q You can answer.

A Can you repeat that again, please?

Q Sure. To whom at DASNY -- I'm sorry, who was the principal person at DASNY to whom you reported?

A Well, on a contractual level, I think the person that I interacted with most would have been Chuck Bartlet, but I don't think on a day-to-day basis, we really reported to anybody.

We were asked to look at the information, they showed us where the information was, and we worked on doing our analysis, so there wasn't really any day-to-day supervision or reporting.

Q And when you completed your analysis, was there a particular person at DASNY to whom you provided it?

A Yes.

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Q And who was that?

A George Weissman.

Q Mr. Weissman is in Albany?

A I think that's his permanent station, is Albany, but I think he spends a lot of time in the New York City office.

Q Mr. Dieterle, of you and Mr. McKay and Mr. Vella, can you describe, just very generally, your respective responsibilities?

A Sure.

Q On this project, obviously.

A I would say in general terms, even though we overlapped a little bit, Jim McKay was responsible for I guess what you would generally refer to as schedule analysis or schedule review or delay review or something to that effect. I was responsible for the damages and financial side of our analysis, and Ed Vella supported both myself and Jim McKay.

Q Mr. Dieterle, during your work on the project, did you interface with anybody at the corporation counsel's office?

A No, not directly. The only time I think I may have had any dealings -- I'm not

1 DIETERLE 30(b)(6)

2 sure they were -- there was -- at an initial
3 meeting, they may have been there, I don't
4 recall, but once we got working on it, I didn't
5 have any involvement with corporation counsel
6 directly.

7 Q To your knowledge, did either
8 Mr. McKay or Mr. Vella have any direct dealings
9 with anybody from corporation counsel's office?

10 A No, they wouldn't have had any
11 connections.

12 Q During your work on the project, did
13 you have any dealings with any city agency
14 other than -- or state agency other than DASNY?

15 A I don't believe so, nothing comes to
16 mind.

17 Q For example, not the office of court
18 administration?

19 MR. CARDENAS: Belated objection to
20 the form of that question. If you're
21 seeking -- I don't want to have a speaking
22 objection, but it just seems confusing to
23 me what you mean by interaction with OCA.
24 I mean, he clearly could have gone to the
25 courthouse and they let him in. I don't

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know what you're looking for.

MS. HEWITT: Okay. I do object to speaking objections. If there's an objection, it's on the record. If he doesn't understand a question, I've asked him to tell me he doesn't understand the question.

MR. CARDENAS: That's fine.

A I mean, I don't recall having any dealings with them, I'm not really quite sure who they are.

Q Did you have any dealings with any of the prime contractors, and when I say dealings, I mean direct dealings with any of the prime contractors on the job?

A Not in our initial review, no.

Q And when you say your initial review, is there some later point at which you did have dealings with some of the contractors?

A Only in a more recent evaluation that I mentioned earlier with O'Kane forensic audit.

Q But during the late '07, early '08 period, no one among the contractors; is that correct?

1 DIETERLE 30(b)(6)

2 A That's correct.

3 Q Now, Mr. Dieterle, could you describe
4 generally the work that you and your team did
5 in connection with the claims audit work that
6 you did on this project?

7 A Well, in general terms, I think we, I
8 guess, performed a preliminary evaluation of
9 the claims as submitted. I'm -- I guess they
10 were referred to by some kind of a change order
11 request number or something like that, but
12 there were essentially claims, and we reviewed
13 the information that was provided in support of
14 the contractor's request for payment on these
15 claims, we analyzed the schedules, the damages,
16 you know, what happened on the job, the project
17 record, things of that nature.

18 Q When you say the claims as submitted,
19 you mean claims by individual contractors; is
20 that right?

21 A Yes.

22 Q Were there more than -- withdrawn.
23 Was there more than one contractor
24 that had submitted claims?

25 A Well, just to clarify, the use of the

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term "claim," I think, is probably a little bit not exactly true. I think some of them submitted a change order request, so to take into account if you include in the word claims change order requests, when that information came in, it was given a change order request number, yes, we looked at more than one.

Q Well, I think it's important to clarify that, and you used the word "claims," so I want to make sure I understand it the way that you used it.

When you analyzed claims, as you've used that term, was it ever for anything other than a change order request?

A No.

Q If somebody submitted a request for equitable adjustment, was that deemed to be a change order request and you then analyzed it?

MR. CARDENAS: Objection to form.

A I'm not sure if any of them utilized those terms at this point, some may have used that term, I'm not sure even what that term means legally, if anything, but we looked at all of them as a claim even though it may have

1 DIETERLE 30(b)(6)

2 been a request for additional compensation or
3 something like that in terms of what it was
4 called by the contractor.

5 Q But ultimately you deemed them for
6 your own purposes as change orders; is that
7 correct?

8 A No, no, just the opposite, I deemed
9 them claims even though it was assigned some
10 kind of a numbering system so it didn't get
11 lost, they were all deemed by us to be claims.

12 Q And were those claims for more than
13 one contractor?

14 A Yes.

15 Q Mr. Dieterle, were there any reports
16 prepared as a result of the analysis that you
17 did, any written reports?

18 A Yes.

19 Q And to whom were those reports --
20 well, withdrawn.

21 Was there more than one report?

22 A Well, that's a tough question to
23 answer. Every time you update your report,
24 it's another report, so to speak. I'm not sure
25 if we submitted, formally submitted one draft

1 DIETERLE 30(b)(6)

2 or two drafts, but it was no more than two
3 but...

4 Q And to whom were those reports
5 submitted?

6 A George Weissman.

7 Q Anybody else?

8 A No.

9 Q To your knowledge, were they, at
10 least by Hill, were they submitted to the
11 corporation counsel's office?

12 MR. CARDENAS: Objection, asked and
13 answered, but you can answer it again.

14 A I didn't submit anything to
15 corporation counsel.

16 Q Did the reports contain any legal
17 analysis?

18 MR. CARDENAS: Objection -- I
19 think --

20 MR. LEVY: Objection.

21 MR. CARDENAS: I think that's
22 really -- I don't know what you want to
23 do, but I think that's getting very close
24 to the contents of the report, and
25 clearly, I don't even think it's debatable

1 DIETERLE 30(b)(6)

2 that the contents of his report are not to
3 be disclosed for several reasons, but can
4 you read the question back.

5 (Record read.)

6 MR. CARDENAS: I stand by the
7 objection. He's not here to answer that
8 today.

9 MS. HEWITT: Are you directing him
10 not to answer?

11 DI MR. CARDENAS: I am directing him not
12 to answer at this point.

13 Q Mr. Dieterle, the reports that were
14 submitted were authored by whom?

15 A The Hill project team, primarily
16 myself and Jim McKay.

17 Q Were they in a particular form?

18 A I'm not sure what you mean by form.

19 Q Did DASNY ask you to use a particular
20 form in presenting the information to them?

21 A In part.

22 Q And what did DASNY provide you with?

23 A A form that was kind of a template
24 for certain aspects of what we were reviewing,
25 and I believe we may have included those as

1 DIETERLE 30(b)(6)

2 like an appendix or something like that.

3 MS. HEWITT: I'll ask this be marked
4 as CWC 4.

5 (CWC Exhibit 4, Document Bates
6 stamped DASNY-E 00812094-96, marked for
7 identification.)

8 MS. HEWITT: For the record, CWC 4 is
9 a three-page document with Bates Nos.
10 DASNY and then dash E 00812094 through 96.

11 Q Mr. Dieterle, I'm going to ask you
12 about the E-mail that's on the first page of
13 CWC 4 in a minute, but I'm first going to ask
14 you about the second page which is -- appears
15 to be a form, and it's called Preliminary Claim
16 Analysis.

17 Have you seen that document before?

18 A Yes, I have.

19 Q Is that the form that DASNY provided
20 you to use in connection with your claims work?

21 A Yes.

22 Q If I can just go back to the first
23 page, there's an E-mail from Mr. Hall to you,
24 and it's dated June 22, 2007?

25 MR. CARDENAS: Objection to the form.

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Just for clarification, the E-mail is actually to Bob and Marc Zaretsky.

MS. HEWITT: I was going to get to Mr. Zaretsky.

MR. CARDENAS: I figured you would.

Q The E-mail is from Mr. Hall, it's dated June 22, 2007. Do you see that?

A Yes.

Q And that was before Hill was formally involved in the claims work; is that correct?

A That's correct.

Q Can you explain to me the context in which Mr. Hall provided this form to you?

A I think the primary context was so that we could understand the type of information that DASNY was hoping to get in addition or derived from our analysis so that would help us to develop a budget to do the work.

Q And can you tell me why -- if you know, why Mr. Zaretsky was included in this E-mail?

A Well, I think in the early aspects prior to actually getting engaged, Marc kind of

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introduced me to the DASNY team. I had never worked for those people, and I think it was essentially a courtesy on Jim's part to provide the communication since we hadn't been engaged yet.

Q And is the form that's attached here, is that something you used once you actually started doing the claims work for DASNY?

A Well, eventually once we got going, we completed the form. I mean, we had to do our analysis before we could complete the form, so it wasn't initially used but...

Q So at some point, this form was filled out or in some way, shape or form, is that correct?

A To the extent we could, yes.

Q If I can just ask you about the second page, and Mr. Cardenas has made it very clear and I do not dispute that I have -- I cannot ask you about the content, but I just want to ask you generally, did -- well, let me ask you first: Was a form like this filled out for each individual contractor?

A The ones we looked at, yes.

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1
2 Q And in the boxes that appear in the
3 bottom half of the document for those
4 individual contractors, did you include the
5 first -- or did you fill out the first box
6 which was the amount and the description of the
7 alleged damages?

8 A Yeah, again, to the extent we could,
9 I'm not sure how much we actually -- there was
10 another form that we filled out that had like a
11 breakdown of the change orders. I don't recall
12 precisely to the extent that we filled this
13 form out per se as a form, as opposed to being
14 put in some other format, so I really don't
15 recall right now whether we completely filled
16 this out in this manner or not.

17 Q Well, let me ask you more generally
18 as part of what you ultimately provided to
19 DASNY, did that include an amount and a
20 description of the alleged damages?

21 A Somewhere in our analysis, yes.

22 Q And the second box here says, alleged
23 impacts which would include delay,
24 acceleration, escalation, excessive change
25 orders, et cetera, was that provided in some

1 DIETERLE 30(b)(6)

2 form to DASNY with respect to individual
3 contractors?

4 A To the extent we could glean that,
5 yes.

6 Q And the next box says, Assessment of
7 Liability. Was the information that's listed
8 there, which is the responsible party or
9 parties for each impact with explanation and
10 percentage of liability, was that presented in
11 some form to DASNY?

12 A I'm not sure if it was by individual
13 contractor per se, not necessarily in this
14 form, but I guess we attempted to describe what
15 we found on the job, and whether we call it
16 assessment or liability, I don't recall.

17 Q But when you say what you found on
18 the job, you mean with some adjustment of
19 liability?

20 A Potentially.

21 Q Now, other than reports,
22 Mr. Dieterle, that you provided to DASNY, did
23 you provide them with any other tangible
24 things, and if you need me to give you
25 examples, I will do that, in other words, like

1 DIETERLE 30(b)(6)

2 a data compilation?

3 A No, I don't believe so. There may
4 have been some spreadsheets that were included
5 in the -- as an appendix to the report, but I
6 don't believe we gave them anything separate
7 from that, at least I don't recall any.

8 Q Did you do -- or did you conduct any
9 interviews in connection with the work that you
10 did?

11 A Yeah.

12 Q And who did you interview?

13 MR. CARDENAS: Objection.

14 Q Did you --

15 MS. HEWITT: Are you directing him
16 not to answer?

17 DI MR. CARDENAS: I am directing him not
18 to answer.

19 Q Did you interview people other than
20 people who work for DASNY?

21 A No, I would say primarily we talked
22 to the DASNY people when we interviewed people.

23 Q When you say primarily, Mr. Dieterle,
24 other than anybody at DASNY, and I'm not asking
25 you for names, but did you interview any people

1 DIETERLE 30(b)(6)

2 other than people who work for DASNY?

3 A No, I don't believe from a standpoint
4 of what was going on the job. The only other
5 communication may have been people, like could
6 have been Marc Zaretsky showing us where the
7 documents were and, you know, explaining this
8 is how the filing system worked or something
9 like that. He couldn't give us any -- much
10 factual information on the job because he
11 wasn't there, so Hill didn't come on at that
12 point in time until later, so anybody that had
13 any relevant information would have been DASNY
14 people, and that's what I meant by primarily.

15 Q Did Hill, again, in connection with
16 your claims work, did you take any -- do any
17 videos?

18 MR. McDERMOTT: Video interviews or
19 videos of the site?

20 Q I meant videos of the site, did you
21 take any videos of the site?

22 A No.

23 MR. CARDENAS: Just for
24 clarification, did you take any videos,
25 period?

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THE WITNESS: No.

MS. HEWITT: Anybody else?

Q Mr. Dieterle, if you could go back to CWC 2. As your counsel indicated earlier, there's a work authorization 8 which precedes work authorization No. 6. If you could go to work authorization No. 8, if you go to Page 3, that one, thankfully, has page numbers.

If you go to Page 3, it says, the professional services described in this work authorization have been completed and, it's dated January 14, 2008.

Do you see that?

A Yes.

Q And is that when the work -- your claims work was completed by January 14, 2008; is that correct?

A I know it was after Christmas at some point, I don't recall any specific date, but it was after the holidays.

Q And Mr. Dieterle, since January 2008, has Hill carried out any other claims and audit service work related to this project on DASNY's behalf?

1 DIETERLE 30(b)(6)

2 A Yes, I mentioned we were doing a
3 forensic audit.

4 Q But that's on O'Kane's behalf,
5 correct?

6 A No, that's on DASNY's behalf.

7 Q I misunderstood that.

8 So the forensic audit for O'Kane is
9 being done on DASNY's behalf?

10 A This is correct.

11 Q And other than that, since January of
12 2008, has Hill done any claims and audit
13 services work for DASNY?

14 A No. On this project.

15 Q Right, understood.

16 MR. LEVY: The question is, there's a
17 follow-up question that I don't know if
18 you're going to ask that has to do -- you
19 know, he is not all of Hill?

20 MS. HEWITT: Right, I'm not going to
21 ask him that now, but I'm definitely going
22 to get to that.

23 Q Mr. Dieterle, in connection with the
24 work that you did, did you create a chronology
25 or you or any of your team create a chronology

1 DIETERLE 30(b)(6)

2 of events for DASNY?

3 A Not formally, no.

4 Q When you say not formally, what do
5 you mean by that?

6 A I guess our report would be some form
7 of a type of a chronology but not as something
8 that was called a chronology.

9 Q But it included dates and schedules;
10 is that correct?

11 A Yes.

12 Q Mr. Dieterle, I could direct you to
13 it, but to save time, the claims and audit
14 services contract that Hill has with DASNY
15 provides for the hiring of subconsultants by
16 Hill.

17 Did Hill, in fact, hire any
18 subconsultants in connection with the claims
19 and audit services work that it did for DASNY?

20 A Not that I recall.

21 Q Mr. Dieterle, then if you could go
22 back to work authorization No. 6, Page 1, under
23 scope of services, Mr. Dieterle, it says, the
24 professional shall provide an analysis of
25 delays encountered on the project and provide

1 DIETERLE 30(b)(6)
2 an assessment of damages claimed by
3 contractors.

4 Do you see that?

5 A Yes.

6 Q Did Hill, in fact, provide that
7 analysis and the assessment?

8 A Yes.

9 Q And it goes on to say, to develop a
10 scope of work once the circumstances clarifying
11 the specific allegations, delays and damages
12 have been determined.

13 Did Hill do that?

14 A As I sit here right now, I don't
15 recall anything specific addressing that
16 particular line.

17 Q And it goes on to say, provide a
18 claims prosecution and defense strategy using a
19 phased approach as follows, and I'll go into
20 some of the things that follow, but did Hill,
21 in fact, provide a claims prosecution and
22 defense strategy?

23 A Not formally. We may have talked
24 about things but not in a formal written way.

25 Q When you say you may have talked

1 DIETERLE 30(b)(6)

2 about things, you mean with various DASNY
3 people?

4 A Yes.

5 Q I'd like to go through the items that
6 are listed in Phase 1, it mentions here a
7 kick-off meeting. Was there, in fact, a
8 kick-off meeting, Mr. Dieterle?

9 A Yes.

10 Q And did you attend that meeting?

11 A Yes.

12 Q And various people from DASNY
13 attended?

14 A Yes.

15 Q Other than people from Hill and
16 people from DASNY, did anybody else attend that
17 meeting?

18 A I'm not sure, as I sit here right
19 now, whether that kick-off meeting is a meeting
20 that occurred early on before we were engaged
21 or it's the kick-off meeting that occurred some
22 time around September.

23 As I recall, the September meeting,
24 which since this was when we were engaged and
25 in April we weren't, it was just Hill staff,

1 DIETERLE 30(b)(6)

2 myself and I think Jim McKay, perhaps even Ed
3 Vella and two or three DASNY people.

4 Q Were there any meetings, whether they
5 were in April or September or later, that you
6 recall where people other than people from Hill
7 and DASNY attended?

8 A No, although it's possible that in
9 the April meeting, there may have been someone
10 from corporation counsel there, I don't recall
11 specifically, but there may have been, but
12 other than that, no.

13 Q Now, under No. 2 of the Phase 1, it
14 says, discuss the project in detail through
15 interviews of key project personnel. And I
16 realize I've asked you this already, but I just
17 want to make sure, there were interviews
18 conducted, they were only with personnel from
19 DASNY; is that correct?

20 A That's correct.

21 Q Now, in Point No. 3 under preliminary
22 assessment, it says, provide a preliminary
23 evaluation of the cause and responsibility for
24 critical delays.

25 Do you see that?

1 DIETERLE 30(b)(6)

2 A Yes.

3 Q Do you have an understanding,
4 Mr. Dieterle, as to what was meant by critical
5 delays?

6 A Yes.

7 Q What is that?

8 MR. LEVY: Objection, this is going
9 beyond the scope of the 30(b)(6)
10 deposition.

11 MS. HEWITT: I disagree. I disagree.
12 I'm asking him about the contract and the
13 work that was done in the contract, I'm
14 not asking --

15 MR. LEVY: You're asking him for
16 interpretation of what the contract means.
17 The 30(b)(6) deposition is supposed to go
18 into the scope of the contract and the
19 work that was performed under the
20 contract, not an analysis of what the
21 contract terms mean and the work that
22 was -- and essentially you're asking him
23 to reveal what work was actually performed
24 pursuant to the contract and offer an
25 insight into the kinds of analysis and

1 DIETERLE 30(b)(6)

2 conclusions that were drawn by asking for
3 his interpretation.

4 MS. HEWITT: But that's absolutely
5 not correct, and I'm using the contract as
6 a way of going through more expeditiously
7 the various items that I have a right to
8 ask him about anyway.

9 Mr. Cardenas, are you going to object
10 or direct your witness not to answer that
11 question?

12 MR. CARDENAS: Not to this question.
13 I do think that the question can be taken
14 as seeking kinds of work. If it goes at
15 all into conclusions, I will absolutely
16 enforce my right to object.

17 MS. HEWITT: I am not going into
18 conclusions or I don't mean to, and I'm
19 sure somebody will let me know if they
20 think I am.

21 Q Mr. Dieterle, you can answer the
22 question. Do you want it read back?

23 MR. CARDENAS: Can you please read
24 the question back to the witness.

25 (Record read.)

1 DIETERLE 30(b)(6)

2 A Yeah, critical delays would mean
3 critical path delays, delays that would have
4 caused a delay to the overall completion of the
5 project.

6 Q Hill, in fact, provided that
7 analysis; is that correct?

8 A To the extent we could, yes.

9 Q If you go to No. 5, Mr. Dieterle,
10 that analysis was performed for each contractor
11 or at least for more than one contractor; is
12 that correct?

13 A Yes.

14 Q No. 7 says, meet to present the
15 preliminary findings.

16 Was there such a meeting?

17 A As I sit here now, I don't recall a
18 specific meeting, but there may have been, but
19 I just don't recall at this point right now
20 sitting somewhere talking about things.

21 Q Mr. Dieterle, if you'll go to No. 10,
22 it says, at the completion of Phase 1
23 preliminary assessment, the professional shall
24 work with the owner to develop a scope of work
25 and budget for a detailed review and evaluation

1 DIETERLE 30(b)(6)

2 of the claims.

3 Do you see that?

4 A Yes.

5 Q Was that done?

6 A I don't recall.

7 Q Mr. Dieterle, the amount listed for
8 work authorization No. 6 to be paid to Hill is
9 158,000.

10 Do you see that?

11 A Yes.

12 Q And if we go back to work
13 authorization No. 8 at Page 2, the amount paid
14 to Hill was an additional 49,500.

15 Do you see that?

16 A Yes.

17 Q To your recollection, whatever the
18 sum of those two numbers is, is that the total
19 amount that was paid to Hill in connection with
20 its claim and audit services work on this
21 project?

22 A Well, it certainly wasn't the amount
23 that was paid. I think, but I haven't looked
24 recently and it's been a while, that we spent
25 less than that and billed less than that, that

1 DIETERLE 30(b)(6)
2 was kind of our authorization, not a lump sum
3 billing amount, so I think it was something
4 somewhat less than that, you know, it's almost
5 significantly less somewhere between the
6 original authorization and the sum of those two
7 numbers, but I don't recall specifically.

8 MR. BYRNE: Is this a good place to
9 take a moment?

10 MS. HEWITT: Sure. Let's take five
11 minutes.

12 (Short recess taken.)

13 Q Mr. Dieterle, I wanted to ask you a
14 couple follow-up questions before I move on.
15 Looking back at work authorization No. 6, under
16 No. 5, for example, which I asked you about
17 whether the analysis was performed for each
18 contractor. Was the analysis performed for any
19 entities other than the contractors, for
20 example, for the previous construction manager?

21 A No.

22 Q How about the architect?

23 A No.

24 MR. LEVY: Objection to the form of
25 the question, it's not a speaking

DIETERLE 3C(b)(6)

objection, Pat --

MS. HEWITT: It's Patricia.

MR. LEVY: Sorry. When you say performed for, are you saying performed on behalf of or?

MS. HEWITT: No, no, no.

MR. LEVY: Okay, because it's not clear.

Q Did you understand that, Mr. Dieterle, I meant did you do a review of the work of the construction manager, did you understand that?

A Yes.

Q And the answer is the same?

A For what?

Q Your answer would be the same?

A Yes, I understood your question.

MS. HEWITT: Thank you. I appreciate the clarification.

Q Mr. Dieterle, the reports that were prepared by your team and given to DASNY in connection with the claims work, was there any input into those reports from anyone in Hill's legal department?

1 DIETERLE 30(b)(6)

2 A No.

3 MS. HEWITT: I'm going to show the
4 witness a document that was previously
5 marked as CWC 1.

6 Q Mr. Dieterle, have you seen the
7 document that's been marked as CWC 1 before?

8 A No.

9 Q And you're aware, however, that at
10 some point in time, Hill became the
11 construction manager on the BCC project; is
12 that correct?

13 A That's correct.

14 Q And are you familiar with the time at
15 which Hill began that work?

16 A I knew at the time when I was working
17 on when that transition was, I don't recall the
18 specific dates at this point.

19 Q Was it before Hill did its claims
20 audit work?

21 A Yes, yes, definitely before that.
22 They were on site when I was there so...

23 Q Now, Mr. Dieterle, did you do any
24 work whatsoever with respect to the
25 construction management aspect of Hill's work?

1 DIETERLE 30(b)(6)

2 A No.

3 Q Mr. Dieterle, prior to the time that
4 you became involved and your team became
5 involved with the project, had Hill done work
6 reviewing change orders, to your knowledge?

7 A I think, but I am not 100 percent
8 sure. That may have been something that was
9 part of the scope, but I don't recall precisely
10 what they were working on.

11 Q Well, let me ask you this: At the
12 time that you did the work that you described
13 earlier with respect to change orders, did you
14 reference any of the -- any earlier work that
15 Hill had done with respect to change orders?

16 A No, not -- the claims that we looked
17 at that may have had a change order designation
18 to it for tracking purposes were not evaluated
19 at all by the Hill CM staff other than looking
20 at them perhaps and putting them in the file.
21 There was nothing in there that appeared to be
22 any type of an evaluation by the CM staff that
23 was in the file.

24 Q Mr. Dieterle, I understand that you
25 haven't looked at the or haven't seen the

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construction management contract before. I'm just going to ask you about some aspects of it just to generate questions, not because I believe you are or should be familiar with the document.

If you could turn to work authorization No. 12 in CWC 1.

A Is it somewhere in the back, in the front?

Q I'd say about -- it's about halfway through, it's after the contract as a whole, the work authorizations tend to be towards the back.

A Yeah, I think I'm coming up on it.

Yup, I got it.

Q Now, Mr. Dieterle, in work authorization No. 12, Paragraph 2 talks about change orders, and it says, the construction manager will continue with the resolution of change orders pursuant to the owner-approved procedure set forth in the September 25, 2006 memorandum between the owner and the construction manager.

Do you see that?

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A Yes.

Q And do you have any knowledge whatsoever about work done by Hill in the 2006 period with respect to the resolution of change orders?

A No.

Q If you go a little further in that paragraph, the last sentence says, as of the date hereof, there are approximately 700 change orders remaining to be processed, not including additional program changes.

Do you see that?

A Yes.

Q Do you know, Mr. Dieterle, if any of the change orders that your team reviewed were, if you will, left over or among the remaining change orders that are referenced here?

MR. CARDENAS: Objection to the form of the question.

You can answer the question if you understand.

A Well, I think I understand your question, but I have no knowledge as to what the 700 change orders actually meant or which

1 DIETERLE 30(b)(6)

2 ones were included.

3 Q Mr. Dieterle, do you know whether
4 Hill did any claims audit work under the
5 construction management contract?

6 A No.

7 MR. CARDENAS: Objection, asked and
8 answered as well, but that's fine.

9 Q I asked the question poorly too.

10 To your knowledge, did Hill
11 International do any claims and auditing work
12 under the construction management contract?

13 A Not to my knowledge.

14 Q Mr. Dieterle, if you don't mind
15 turning back to work order No. 9, which is just
16 a few pages before what we were just looking
17 at, on Page 1 of work authorization No. 9 under
18 No. 6, it's called claims support, and it says,
19 the professional will inform the owner in a
20 timely manner of any potential claims and will
21 proactively try and settle such issues.

22 Do you see that?

23 A Yes, I do.

24 Q To your knowledge, did Hill do any
25 work under this contract as described there

1 DIETERLE 30(b)(6)

2 that is claim support?

3 MR. CARDENAS: Form objection.

4 You can answer if you understand.

5 A No, I have no knowledge of what they
6 were doing.

7 Q If you -- on that same page, if you
8 go up to the paragraph that talks about change
9 orders.

10 A Okay.

11 Q The last sentence says, as necessary,
12 the professional will perform schedule analysis
13 in order to confirm and/or support certain
14 change order requests and entitlement for
15 noncompensatory time extensions.

16 Do you see that?

17 A Yes.

18 Q Do you know whether Hill
19 International did that work under this
20 contract, Mr. Dieterle?

21 A I have no idea what they did.

22 Q When you -- and I understand
23 Mr. McKay may have done more of the scheduling
24 work, but when you did the schedule analysis
25 work that you did under -- by your team, were

1 DIETERLE 30(b)(6)

2 you provided with any of the work that Hill had
3 done under the construction management
4 contract?

5 A Well, even assuming that they even
6 did any that I'm not aware of, no, we didn't
7 utilize anything that they had, and I don't
8 recall that they gave us anything anyway so...

9 MS. HEWITT: This is going to be
10 CWC 5, and for the record it's a two-page
11 document with the Bates No. DASNY-P
12 0001151803 and 04.

13 (CWC Exhibit 5, Document Bates
14 stamped DASNY-P 0001151803-04, marked for
15 identification.)

16 Q Mr. Dieterle, have you seen the
17 document that has been marked as CWC 5 before?

18 A I saw the original, I don't recall
19 seeing it with the markups on it, but...

20 Q Understood. And maybe it might have
21 been marked up by DASNY, for all I know, but
22 the original document was submitted by your
23 office; is that correct?

24 A That's correct.

25 Q And it lists the professionals who

1 DIRECTIVE 30(b)(6)

2 worked on the project in the month of
3 September 2007, correct?

4 A Yes.

5 Q And this was in connection with the
6 claims and auditing services work; is that
7 correct?

8 A That's correct.

9 Q Now, I know you testified earlier
10 that Mr. Zaretsky had nothing to do with this
11 project. I see that he's billed for an hour
12 and a half of his time.

13 Do you remember what, if any, role he
14 might have had in the month of September 2007?

15 A He may have charged some time in
16 terms of identifying where things were on the
17 project. He facilitated a -- getting an office
18 built for us so we could have a separate little
19 enclave with which to work unfettered from the
20 rest of the project. That would be my guess as
21 to what he may have included on that.

22 (CWC Exhibit 6, Document Bates
23 stamped DASNY-P 000271485-90, marked for
24 identification.)

25 MS. HEWITT: CWC 6 is a six-page

1 DIETERLE 30(b)(6)

2 document with the Bates Nos. DASNY-P
3 000271485 through 90.

4 Q Again, Mr. Dieterle, I understand
5 that some of the markups you haven't seen
6 before, but have you seen the document -- the
7 underlying document that has been marked as
8 CWC 6 before?

9 A Yes.

10 Q And is this a billing backup for the
11 time spent by various Hill personnel in
12 October 2007?

13 A Yes.

14 Q I want to ask you about a couple of
15 the -- or a few of the entries. On the first
16 page, about halfway down from Mr. McKay,
17 there's an entry on October 19, 2007 which
18 says, review schedules and claims, and then it
19 says, prepare overall progress over time
20 graphic.

21 Do you see that?

22 A Yes.

23 Q Can you tell me what the time graphic
24 is or was?

25 A Well, I can only guess at what that

DIETERLE 30(b)(6)

may mean.

MR. CARDENAS: Don't guess. If you know, you can answer any question she poses to you. Don't guess.

A I can't say with certainty. I would have an idea what it might mean but not without absolute certainty.

Q Well, you testified earlier that Mr. McKay was doing the schedule work; is that right?

A Yes.

Q Did Mr. McKay prepare at some point, or people working with him, some sort of a graphic that charted out the schedule?

A The schedule?

Q Well, the time line on the project.

A Well, I don't think that even says -- I don't know. I guess it could be -- he may have. I don't recall exactly what that would be referring to.

Q A couple of entries down it says, revise progress efficiency graphic.

Do you see that?

A Yes.

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Q Do you know what the progress efficiency graphic was?

A He prepared some graphs, I don't recall exactly what that one would have entailed, but I believe he did prepare some graphics.

Q And how were those graphics used, were they given to DASNY?

A They may have been incorporated into our report, I don't know. They may have been something that we did just from an analytical standpoint to see something pictorially and not made its way directly into our report. That's the best I can answer that.

Q Mr. Dieterle, you testified earlier that there were some individuals other than yourself and Mr. Vella and Mr. McKay who worked on this project. Was Kevin Kreitzer one of those people?

A Yes.

Q And on the second page, there are numerous entries for Mr. Kreitzer, many of which say research and analyze PCO's. PCO's means preliminary change orders or proposed

1 DIETERLE 30(b)(6)

2 change orders?

3 A Proposed or potential, something like
4 that, yeah.

5 Q Were those PCO's that Mr. Kreitzer
6 reviewed the change orders that you referred to
7 earlier when you said you were analyzing
8 claims?

9 A They were the claims, yes.

10 Q The claims that you were analyzing in
11 your aspect of the work; is that right?

12 A That's correct.

13 Q Now, if you turn to Page 3, about
14 maybe two-thirds of the way down, on
15 October 19th, there's an entry for Mr. Vella
16 which says, review contractor's claims for
17 damages and input pertinent information into
18 spreadsheets.

19 Do you see that?

20 A Yes.

21 Q Were spreadsheets, in fact, prepared
22 by Mr. Vella showing the various contractor's
23 claims for damages?

24 A Yes.

25 Q If you go to the next page, there's

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2 some entries for Mr. Dunnigan. Is Mr. Dunnigan
3 another individual who worked on this project
4 for Hill?

5 A Yes.

6 Q And there's an entry on October 19th
7 that says, replicate manhour reports.

8 Do you see that?

9 A Yes.

10 Q Can you tell me what a manhour report
11 is?

12 A I can tell you generically what a
13 manhour report might be, you know, just a
14 listing of the manhours expended on the job
15 perhaps by work activity, perhaps by time,
16 things of that nature.

17 Q There's an entry a couple of entries
18 down for Dierks Heating. It says Dieks, but I
19 think it's meant to be Dierks, which is D I E R
20 K S.

21 Do you know what that work done by
22 Mr. Dunnigan was with respect to Dierks
23 Heating?

24 A Probably part of something we asked
25 him to do in terms of analyzing the Dierks

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2 claim.

3 Q A couple of lines down, there's
4 another entry for Mr. Zaretsky, and
5 Mr. Zaretsky is referred to as a senior project
6 manager.

7 Was he a senior project manager on
8 the claims project?

9 A No.

10 Q Is that his title with respect to the
11 construction management work?

12 A Yes.

13 (CWC Exhibit 7, Document Bates
14 stamped DASNY-P 0001152635-40, marked for
15 identification.)

16 Q Mr. Dieterle -- sorry, let me
17 identify for the record --

18 MS. HEWITT: CWC 7 is a five-page
19 document with the Bates Nos. DASNY-P
20 0001152635 through 2640.

21 Q Mr. Dieterle, have you seen the
22 document that's been marked as CW 7 before?

23 A I -- again, with the proviso that
24 there's some markings on it, that that part I
25 didn't see. Obviously I sent this out.

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2 However, it does not appear that the document
3 is complete as submitted, so when you say did I
4 see this document, I saw it in its entirety and
5 not...

6 Q What is missing from this,
7 Mr. Dieterle?

8 A There would be a summary page for
9 the -- after the letter of the entire invoice,
10 and it appears that it may have cut off on
11 Page 4, seems like it kind of abruptly cut off
12 there, maybe not, but I think there would be
13 another subtotaling on that, so it looks like
14 it may be missing the last page or so.

15 Q I want to ask you about some of the
16 entries on the first page of the billing
17 backup. The very first entry for Mr. McKay
18 says, review documents to assemble bid
19 schedule.

20 Do you see that?

21 A Yes.

22 Q Can you tell me what the bid schedule
23 was?

24 A Not as I sit here.

25 Q The next entry says, review B.H. I

1 DIETERLE 30(b)(6)

2 assume BLL means Bovis Lend Lease; is that
3 correct?

4 A Probably.

5 Q Review BLL monthly reports and
6 schedules to analyze early delays.

7 Do you see that?

8 A Yes.

9 Q Did you have any input, Mr. Dieterle,
10 into the analysis of early delays.

11 MR. McDERMOTT: Objection to form.

12 A Well, Jim McKay was responsible for
13 the review of the delays, and that was his
14 primary responsibility. When you say did I
15 have any input, we may have talked about
16 things, but it was Jim McKay's responsibility
17 for the prime analysis of the delays on the job
18 regardless of when they occurred.

19 Q Whether they were early or later; is
20 that correct?

21 A Yes.

22 Q A couple of entries down on
23 November 15, 2007, it says, compare Bovis
24 schedules to claim schedules.

25 Do you see that?

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2 A Yes.

3 Q Can you tell me what Bovis schedules
4 that refers to?

5 A I'm not 100 percent sure, but
6 probably the schedules in the monthly reports.

7 Q And you're comparing -- or he was
8 comparing the Bovis schedules to the claim
9 schedules, the claim schedules are those from
10 the contractors; is that correct?

11 A That's the way I would interpret
12 that.

13 Q A few entries down on November 21,
14 2007, it says, continue analysis of project
15 schedules to examine relationship between
16 structural steel and GC No. 1 contracts.

17 Do you see that?

18 A Yes.

19 Q Did you have any input into that
20 work, Mr. Dieterle?

21 A Not in detail.

22 Q To your knowledge, was an analysis
23 done examining the relationship between
24 structural steel and GC No. 1 contracts?

25 A I don't recall as I sit here, but

1 DIETERLE 30(b)(6)

2 based on that description, I think that I would
3 probably conclude there must have been.

4 Q If you go to the second page,
5 Mr. Dieterle, going to the entries for
6 Mr. Kreitzer, starting on November 1, 2007, it
7 says, review Caldwell pending change orders.

8 Do you see that?

9 A Yes.

10 Q Were Caldwell pending change orders
11 among the change orders that Hill International
12 reviewed in connection with its claims work?

13 A Only those that were a claim as we
14 saw them. I don't recall, some contractors had
15 more than one claim, in other words, it may
16 have been the subject of two PCO's, but it's
17 not an overall review of the PCO's, just the
18 PCO's that were determined to be claims that we
19 evaluated.

20 Q Mr. Dieterle, it may only be me, but
21 can you explain to me what the difference
22 between a regular PCO -- again, as we're
23 talking about this project, not generically, a
24 regular PCO and something that you all
25 determined to be a claim?

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2 MR. CARDENAS: Objection to the form
3 of that question, but you can certainly
4 explain the basis for your answer.

5 A Well, a regular PCO would be a
6 request to be paid for an extra, perhaps for a
7 change to the dry wall or something like that,
8 you know, couple thousand, 10,000, something
9 relatively minor.

10 Each change request that came in was
11 given a PCO number, and there was a lot of them
12 from the whole job, but the reason we're
13 referring to them as PCO's is because the
14 claims, that is, is because the P -- they had
15 PCO numbers assigned to them, so we -- when we
16 tried to track down information regarding a
17 claim, we needed to look at it as a PCO number,
18 and it was a unique number for that particular
19 claim, and generally it was an item associated
20 with a request for time extension or a request
21 for delay damages or request for lost
22 productivity and a significant volume of --
23 dollarwise.

24 Q Is it fair to say then that -- well,
25 withdrawn.

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When you say they were assigned a PCO number, that was by Hill?

A Yes, well, it may have started out by Bovis and continued on by Hill as the second CM.

Q But they were assigned a PCO number for the purpose of keeping track of them; is that correct?

A Yes.

Q And they were determined to be -- withdrawn.

As I understand what you're saying, they were then determined to be claims if they were somehow out of the ordinary of what would be a regular PCO; is that correct?

A Yeah.

Q So either if it was an unusually high amount of money, it would be then considered a claim; is that right?

A I don't know that that was completely determined as to what was a claim, but more than likely, that would be a -- one way to determine what would represent a claim or there could have been reasons that there were other

1 DIETERLE 30(b)(6)

2 PCO's that had larger volumes.

3 Q But if it was a request -- if it was
4 a delay claim, that would be considered a
5 claim; is that correct?

6 A That would be probably one of the
7 higher levels of criteria to -- in addition to
8 dollar volume to establish --

9 Q To make it into a claim?

10 A -- whether it was a claim, yes.

11 Q Getting back to the entries for
12 Mr. Kreitzer, he was reviewing pending change
13 orders to the extent that they were deemed to
14 be claims; is that correct?

15 A That's correct.

16 Q If you go down to the first entry for
17 Mr. Vella on November 1, 2007, it says, travel
18 to and from project site and collect and review
19 documents related to contractor's claim for
20 equitable adjustment.

21 Do you see that?

22 A Yes.

23 Q Do you know which contractor that
24 was?

25 A No.

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2 (CWC Exhibit 8, Document Bates
3 stamped DASNY-P 0001153011, marked for
4 identification.)

5 MS. HEWITT: CWC 8 is a two-page
6 document with the Bates Nos. DASNY-P
7 0001153011.

8 Q Mr. Dieterle, I'm going to ask you
9 about Page 1 of CWC 8. Did you send that
10 letter to the Dormitory Authority in or about
11 January 10, 2008?

12 A Yes.

13 Q In the first paragraph of your letter
14 it says, during this period, Hill
15 representatives completed its review and
16 analysis of contractor claims. We attended a
17 meeting in New York City and prepared and
18 submitted a draft report of our preliminary
19 findings.

20 Do you see that?

21 A Yes.

22 Q To whom did you give your draft
23 report of preliminary findings?

24 MR. CARDENAS: He can answer.

25 Objection, asked and answered.

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A George Weissman.

Q Other than George Weissman, did you give it to anybody else?

A No.

Q Was the draft report ever turned into a final report?

A No.

Q And Mr. Dieterle, the second page of CWC 8 is a compliance report. Can you just explain briefly what the purpose of this document -- was this a form that you had to fill out for DASNY?

A Yes.

Q And you submitted it each month with your payment requisitions?

A Yes.

Q Mr. Dieterle, did you deal with somebody named Paul LaJoy?

A Paul LaJoy, yes, the answer is yes.

MS. HEWITT: Off the record.

(Discussion held off the record.)

Q Is Mr. LaJoy also at DASNY?

A Yes, he is.

Q And what was the nature of the

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2 interaction you had with Mr. LaJoy?

3 A I would say two components of
4 interaction with Paul LaJoy, one was he
5 provided me some financial information that
6 DASNY may have had about certain things related
7 to the project, and then he, I think, as the
8 project accountant or something to that effect,
9 also was involved in, I don't know necessarily
10 the approval, but in terms of cutting the check
11 or getting the process of us getting paid for
12 our services.

13 (CWC Exhibit 9, Document Bates
14 stamped DASNY-E 02249225-26 and additional
15 two pages not Bates stamped, marked for
16 identification.)

17 MS. HEWITT: CWC 9 is a four-page
18 document, the first two pages are Bates
19 numbered DASNY-E 02249225 and 26. The
20 second two documents, as I -- second two
21 pages, as I mentioned briefly to Mr. Levy
22 earlier, are not Bates stamped, but they
23 are from DASNY's production and appear to
24 be text associated with the first page of
25 the exhibit.

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2 Q Mr. Dieterle, do you -- did you -- do
3 you recall sending Mr. LaJoy, on February 4,
4 2008, a construction contract and budget
5 information?

6 A Not as I sit here, no.

7 Q Well, do you have any reason to
8 believe, looking at this E-mail, that you
9 didn't send construction contract and budget
10 information to Mr. LaJoy on February 2008 --
11 sorry, that Mr. LaJoy sent you -- you know
12 what, let's start all again.

13 The first page of CWC 9 is an E-mail
14 string, Mr. Dieterle. Apparently you sent an
15 E-mail to Mr. LaJoy on February 1, 2008 and he
16 responded on February 4, 2008.

17 Do you see that?

18 A Yes, I do.

19 Q And he sent you an Excel workbook
20 with the requested information.

21 Do you see that?

22 A Yes.

23 Q Do you recall what Excel -- excuse
24 me, what requested -- information you had
25 requested?

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2 A Well, based on the two sheets that
3 aren't Bates stamped -- well, I can only guess
4 that it's related to that, but I --

5 Q We'll get to that eventually. I
6 understand Mr. Cardenas only wants you to
7 answer what you've been asked, but we are going
8 to get to it. But independently of what is on
9 the last two pages, do you recall having asked
10 him for an Excel workbook?

11 A No, I don't.

12 Q Mr. Dieterle, Mr. LaJoy's E-mail
13 talks about pending PCO's and 25 percent of
14 submitted claim value.

15 Do you see that?

16 A Yes.

17 Q Do you know why he's referencing
18 25 percent of submitted claim value?

19 A No, I don't.

20 Q If you look at the last two pages,
21 and I think it's fair to say that this is
22 something that originally appeared in Excel
23 format, and it's harder to read the way it is
24 here, but -- and the first item says,
25 construction budgets with original construction

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2 budget and then current construction budget.

3 Do you recall seeing a document like
4 that?

5 A I have a vague recollection in terms
6 of just the status of the contractors, where
7 they started and what the current value was
8 just so I knew where the current value of the
9 contract was.

10 Q Can you tell me why in February of
11 2008 you wanted that information, Mr. Dieterle?

12 A Not specifically, no.

13 Q And the reason I'm asking the
14 question particularly is, because if, in fact,
15 Hill had finished its work in January of '08, I
16 just wonder if you have any recollection of
17 continuing to do work as late as February 4th
18 of '08?

19 A I don't have a particular
20 recollection, but I think it's obvious there
21 must have been something that someone asked me
22 about at DASNY to look into, and perhaps that
23 was what was done, but obviously there's
24 something there because of the date, it was
25 after the January time period.

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2 MS. HEWITT: CWC 10 are two different
3 E-mails, both dated Friday January 18,
4 2008, and the Bates numbers are DASNY
5 E-00221439 through 445, and then they pick
6 up again at 448 through 456.

7 (CWC Exhibit 10, Document Bates
8 stamped DASNY-E 00221439-45 and 448-456,
9 marked for identification.)

10 Q Mr. Dieterle, did you receive these
11 two E-mails from Mr. Morse in January of 2008?

12 A Appears to be.

13 Q And these are documents that are
14 showing that DASNY had approved certain change
15 orders; is that correct?

16 A Appears to be, yeah.

17 Q And were those change orders that had
18 been reviewed by Hill in the course of its
19 claims work?

20 A Well, they would be claims that we
21 reviewed not, you know, not outside of what
22 would be considered a claim, but I believe that
23 some of those may have been things that had
24 already been, as is noted, previously approved
25 and processed, so we were getting some

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2 information on that apparently, but I don't
3 have any direct recollection.

4 Q Well, I see. So these are claims
5 that had been -- or excuse me, change orders
6 that had been processed and approved prior to
7 Hill's involvement in the project; is that
8 correct?

9 A Yes.

10 Q Do you know why Mr. Morse was sending
11 you those in January of 2008?

12 A As opposed to some other date or?

13 Q Well, again, my understanding is that
14 you were pretty much finished with your work by
15 January 18th of 2008?

16 A Well, based on that one document we
17 had with DASNY, it appeared that there was
18 something going in like mid January that we
19 were completed. Now, as I'm looking, we must
20 have issued a draft in December and perhaps the
21 next one was actually not issued until early
22 February some time.

23 Q The next draft?

24 A The next draft. I thought it might
25 have been January, but it may have actually

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trickled into February despite the language that the work was completed in mid January. We were cleaning up things including what appears to be maybe something that we received from this E-mail on January the 18th, so I may have been off a month.

Q And in any event, if you did a draft in late January or early February of 2008, you did not do a final report to DASNY; is that correct?

A That is correct.

Q Mr. Dieterle, to your knowledge, has DASNY ever released any of Hill's findings publicly?

A I have no knowledge of what they did.

Q At all?

A With anyone, yeah.

Q Mr. Dieterle, if you could go back to CWC 2, which is the claim and audit services contract. Appendix A of that document, which is A1 --

A Okay.

Q This is not one of the work authorizations this is Appendix A to the

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general contract, but I just want to ask you a couple of questions, and I realize I may have already asked you some of these.

Under No. 5, with respect to the BCC, did Hill -- and again, the work that you worked on, Mr. Dieterle, did Hill do an evaluation of the architect, the engineer or the construction manager performance in connection with the BCC?

A No.

Q With respect to No. 6, which relates to contractor performance, did Hill do an analysis of actual manpower versus planned and required?

A I don't recall specifically what we did in those areas, and it may have been a difference for different contractors too if we did do it so...

Q So do you recall whether Hill did anything with respect to labor productivity analysis?

A Well, to the extent that a claim had an analysis of productivity as part of its claim, we were analyzing that, that issue.

Q And similarly, you would have

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2 analyzed labor and material cost if a claim had
3 that as part of the component?

4 A Yes, to the extent we could.

5 Q Mr. Dieterle, other than contractors,
6 do you remember -- let me say it differently.
7 Other than contractors, did Hill analyze the
8 work of any subcontractors?

9 A To the extent --

10 MR. CARDENAS: Objection to form.

11 Go ahead and answer.

12 Just a form objection.

13 A To the extent that a contractor claim
14 included the -- a claim or a request for
15 additional compensation, that was wrapped
16 within the prime contractor's claim, yes.

17 Q As we sit here today, do you recall
18 who any of those subcontractors might have
19 been?

20 A Yes.

21 Q And who are they?

22 A The only one that I can recall here
23 as I sit here today is -- because it was
24 somewhat recent, was O'Kane, their sub that
25 included a claim was named Danco, but I don't

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2 recall specifically any of the other subs.

3 (Discussion held off the record.)

4 MR. CARDENAS: The witness has
5 indicated, given the colloquy of counsel,
6 that something wants -- something has
7 spurred him to amend his answer slightly.

8 A Just to make the clear record, we
9 were not asked to look at the CM, the architect
10 or the engineer directly, but if there was
11 something in our report factually that we saw
12 that would have in any way described actions,
13 inactions or anything of any of the parties,
14 then it might be something in the report.

15 In other words, it wasn't a formal
16 request like we did with the contractors, but
17 obviously, all parties on the job were involved
18 in the job, and so I just want to make sure,
19 there might be something that we said, well,
20 this guy did this or this guy did that or maybe
21 didn't do this, but it wasn't in the context of
22 being posed the question analyze the CM, the
23 engineer, the architect.

24 Q Okay. Mr. Dieterle, if you don't
25 mind going back to CWC 7. I'm going to ask you

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2 about Page 2 of the billing backup which I
3 asked you about before, the reference to
4 Mr. Kreitzer review of Caldwell pending change
5 orders.

6 And I wanted to ask you,
7 Mr. Dieterle, whether Hill prepared any
8 financial analyses of the payment request by
9 Caldwell Wingate either by Mr. Kreitzer or by
10 you or anybody?

11 A Can you repeat that so I understand?

12 Q Sure. Did Hill, in the course of its
13 claims work, prepare any financial analyses of
14 the payment requests by Caldwell Wingate?

15 A I don't believe we did, no, although
16 we may have looked at it just to get an
17 understanding of things, but we didn't do a
18 specific analysis of the payment request.

19 I'm not sure what you mean by
20 analysis particularly, but in terms of a
21 separate analysis of that, I don't believe, to
22 answer your question, that we did anything like
23 that.

24 Q And to the extent that I can be
25 clearer, I meant a financial analysis or I

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2 think I said that but...

3 A Even then, I'm not exactly sure what
4 financial analysis means. I mean, it could
5 mean a lot of things in the context of a
6 payment application, so it doesn't sound like
7 anything that we did, but I'm not 100 percent
8 sure what you mean by financial analysis or
9 analysis of any kind.

10 Q Is it fair -- well, withdrawn.

11 Did Hill do any analysis of
12 claims-related materials from Caldwell Wingate?

13 A Well, again, I'm not sure what you
14 mean by claims related material. Unless you're
15 referring to that as meaning the backup that
16 was provided by Caldwell Wingate or any
17 contractor, that's what I would infer from your
18 question that you're asking me.

19 Q That's correct.

20 A Well, yeah, in any of the contractors
21 that we reviewed, we analyzed the claim in the
22 context of what was being provided from the
23 basis of the information that was in the
24 package and what else from the project record
25 would be available to evaluate it.

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(Short recess taken.)

Q Mr. Dieterle, I just have a couple more questions.

Does the name JD Edwards mean anything to you?

A I think they're some kind of an investment house, as I recall.

Q But in connection with this project, does it mean anything to you?

A I think there may be -- it may be a software program that DASNY uses for its financial reporting on projects.

Q And Mr. Dieterle, can you tell me the -- to the extent that you know it, the background, Mr. McKay's background?

A Mr. McKay is a registered architect and a professional engineer.

Q And Mr. Vella?

A Mr. Vella has a -- I think he has like an associate's degree in some kind of construction technology or something like that.

MS. HEWITT: I have no further questions.

I would like to say on the record to

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thank you and your colleagues for being extremely gracious, we don't get this kind of treatment for every deposition, and I know we're not going to get this type of treatment for every deposition and particularly from a nonparty, so we do appreciate it.

MR. CARDENAS: You are welcome.
Thank you for doing it way down here.

THE WITNESS: We try to make our guests, even though they're trying to ask tough questions, to make them comfortable.

(Time noted: 12:20 p.m.)

A C K N O W L E D G M E N T

STATE OF NEW JERSEY)

: ss

COUNTY OF)

I, ROBERT DIETERLE, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of March 20, 2009; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

ROBERT DIETERLE

Signed and subscribed to before me
this _____ day of _____, 2009

Notary Public, State of New Jersey

C E R T I F I C A T E

STATE OF New Jersey)

: ss


COUNTY OF Monmouth)

I, RITA M. PERSICHERTY, a Notary Public within
and for the State of New Jersey, do hereby certify:

That ROBERT DIETERLE, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not related to any
of the parties to this action by blood or marriage;
and that I am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 31st day of March, 2009.


RITA M. PERSICHERTY

*** ERRATA SHEET ***

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NAME OF CASE: Gross v American, et al
 DATE OF DEPOSITION: March 20, 2009
 NAME OF WITNESS: ROBERT DIETERLE 30(b)(6)

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Subscribed and sworn before me
 this ____ day of _____, 2009.

(Notary Public)

My Commission Expires:

WILLIAM A. GROSS

BSA/XMAX(1)

VS. AMERICAN MANUFACTURERS

ROBERT DIETERLE 30(b)(6) - 3/20/09

Concordance Report	79:15, 18	11:6	5:15	8:12
Unique Words: 1,251	*** 1 ***	199 [1]	25 [3]	*** 6 ***
Total Occurrences: 4,683		2:17	55:22, 78:13, 18	
Noise Words: 382		1996 [1]	250 [1]	6 [24]
Total Words In File:	1 [14]	13:12	2:5	1:18, 8:3, 13, 11:12, 18:22,
12,834	43:22, 45:6, 46:13, 49:22;	19th [2]	25th [1]	19:18, 20:7, 8, 21:5, 22:2,
Single File Concordance	53:5, 7; 55:6; 57:17; 69:16,	64:15; 65:6	2:17	4, 8; 41:7; 43:22; 47:9, 17;
Case Insensitive	24; 70:6; 73:17; 74:9; 77:15	*** 2 ***	26 [1]	50:8; 51:15; 57:18; 60:22,
Noise Word List(s):	10 [6]		76:19	25; 61:8; 83:11; 92:6
NOISE NOI	8:3, 23; 49:21; 74:11; 80:2,		2640 [1]	60 [1]
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Includes ALL Text	10,000 [1]	18:21, 23; 19:24; 41:5;	286 [1]	631.493.0763 [1]
Occurrences	71:8	46:13; 50:13; 55:18; 82:20;	7:5	6:9
Dates ON	100 [5]	86:2	*** 3 ***	631.499.5409 [1]
Includes Pure Numbers	3:13; 5:5; 54:7; 69:5; 87:7	20 [3]		6:8
Possessive Forms ON	10004-1314 [1]	1:14; 90:9; 92:5	3 [5]	66 [1]
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